

REMARKS

Applicant respectfully requests reconsideration of the present application in view of the foregoing amendments and in view of the reasons that follow.

Herein claims 1, 2, 3, 7, 26, 68, 69, 90, 96 are amended. Claims 6, 8, 28-67, and 70-86 had been cancelled without prejudice or disclaimer. Claims 1, 3-5, 7, 9-27, 68-69, and 87-101 are pending in the application.

As discussed in more detail below, the rejection of dependent claims 2, 3, 4, 5, 26, 27, 69, 90, and 96 is overcome herein by submission of a Declaration under 35 U.S.C. 103(c). With this declaration, these claims now would be in condition for allowance.

However, by the present Amendment, a portion of the subject matter of dependent claim 2 has now been incorporated into its parent claim 1. Accordingly, claim 1, as amended herein, is similar to an independent version of claim 2 (but refers to “a protein formulation” instead of “an insulin formulation”). Therefore, claim 1 and its dependent claims 2, 4-5, 7, 9-25, and 98-101 are believed to be allowable as noted above. Claim 2 is amended to specify that the protein formulation is an insulin formulation.

Similarly, the subject matter of dependent claim 69 has now been incorporated into amended parent claim 68. Accordingly, claim 68, as amended herein, is identical to an independent version of claim 69. Therefore, claim 68 and its dependent claims 87-89, and 91-97 are believed to be allowable as noted above. Claim 69 amended to specify that the stabilized protein drug is an insulin formulation.

Claim 3 and 26 each is amended herein to be in independent form. Accordingly, claims 3 and 26 and 27 (dependent claim of 26) are believed to be allowable, as noted above.

In addition, each of claims 90 and 96 is amended herein to be in independent form. Accordingly, claims 90 and 96 are believed to be allowable, as noted above.

No new matter has been added by the claim amendments.

By the present claim amendments, claims 1 and 68 are made allowable (by the inclusion of subject matter from claims 2 and 69, respectively and by making each of claims 3, 26, 69, 90 and 96 independent). Also by the present amendment, each of the other pending claims is dependent (directly or indirectly) on one of claims 1, 26 or 68 and, thus, is believed to be allowable at least for reasons as discussed herein with respect to claims 1, 26 and 68. Therefore, all of the pending claims are in condition for allowance.

Rejections of Claims:

In the Office Action dated March 8, 2007, the Examiner raised the following rejections:

1. Claims 1, 7, 9-25, 68, 87-89, 91-95, 97-101 are rejected under 35 U.S.C. 102(b) as being anticipated by U.S. Patent No. 5,702,372 to Nelson et al.
2. Claims 2 and 69 are rejected under 35 U.S.C. 103(a) as being unpatentable over U.S. Patent No. 5,702,372 to Nelson et al. in view of Ash, U.S. Patent No. 6,042,561.
3. Claim 3 is rejected under 35 U.S.C. 103(a) as being unpatentable over U.S. Patent No. 5,702,372 to Nelson et al. in view of Brange, U.S. Patent No. 4,472,385.
4. Claims 4-5 are rejected under 35 U.S.C. 103(a) as being unpatentable over U.S. Patent No. 5,702,372 to Nelson et al. in view of Ash, U.S. Patent No. 6,042,561, in further view of Brange, U.S. Patent No. 4,472,385.
5. Claim 26 and 27 are rejected under 35 U.S.C. 103(a) as being unpatentable over U.S. Patent No. 5,702,372 to Nelson et al. in view of Ekwuribe, U.S. Patent No. 6,309,633.
6. Claim 90 and 96 are rejected under 35 U.S.C. 103(a) as being unpatentable over U.S. Patent No. 5,702,372 to Nelson et al. in view of Van Antwerp, U.S. Patent No. 6,443,942.

With respect to rejection no. 1 listed above, the rejection is moot in view of the claim amendments and claim cancellations made herein. The rejection nos. 2-6, above are respectfully traversed, in view of the following remarks.

With respect to the rejection nos. 2-6, above, a declaration under 37 CFR 1.131 or 35 U.S.C. 103(c) is submitted herewith by the inventors, declaring that, at the time of the present invention, the inventors were under an obligation to (and subsequently did) assign the invention to Medtronic-MiniMed, Inc. and that Minimed Inc. was owned by Medtronic Inc., the assignee of the cited Patent No. 5,702,372 to Nelson at that time. Accordingly, the accompanying declaration shows that, at the time of the present invention, the inventors were under an obligation to assign the invention to an entity owned by the entity that also owned Patent No. 5,702,372 to Nelson. Therefore, it is respectfully submitted that the rejections 2-6, above, are traversed under 35 U.S.C. 103(c).

Claims 2, 3, 26, 69, 90 and 96, 49, 63, 64 and 66 were not included in any of the other listed rejections (other than rejection nos. 2-6, which is overcome by the enclosed declaration). Accordingly, it is respectfully submitted that each of those claims would be in condition for allowance.

However, by the present Amendment, a portion of the subject matter of dependent claim 2 has now been incorporated into its parent claim 1. Accordingly, claim 1, as amended herein, is similar to an independent version of claim 2 (but refers to "a protein formulation" instead of "an insulin formulation"). Therefore, claim 1 and its dependent claims 2, 4-5, 7, 9-25, and 98-101 are believed to be allowable as noted above. Claim 2 is amended to specify that the protein formulation is an insulin formulation.

Similarly, the subject matter of dependent claim 69 has now been incorporated into amended parent claim 68. Accordingly, claim 68, as amended herein, is identical to an independent version of claim 69. Therefore, claim 68 and its dependent claims 87-89, and 91-97 are believed to be allowable as noted above. Claim 69 is amended to specify that the stabilized protein drug is an insulin formulation.

Claim 3 and 26 each is amended herein to be in independent form. Accordingly, claims 3 and 26 and 27 (dependent claim of 26) are believed to be allowable, as noted above.

In addition, each of claims 90 and 96 is amended herein to be in independent form. Accordingly, claims 90 and 96 are believed to be allowable, as noted above.

No new matter has been added by the claim amendments.

Conclusion

Applicant believes that the present application is now in condition for allowance. Favorable reconsideration of the application as amended is respectfully requested.

The Examiner is invited to contact the undersigned by telephone if it is felt that a telephone interview would advance the prosecution of the present application.

The Commissioner is hereby authorized to charge any additional fees which may be required regarding this application under 37 C.F.R. §§ 1.16-1.17, or credit any overpayment, to Deposit Account No. 19-0741. Should no proper payment be enclosed herewith, as by a check or credit card payment form being in the wrong amount, unsigned, post-dated, otherwise improper or informal or even entirely missing, the Commissioner is authorized to charge the unpaid amount to Deposit Account No. 19-0741. If any extensions of time are needed for timely acceptance of papers submitted herewith, Applicant hereby petitions for such extension under 37 C.F.R. §1.136 and authorizes payment of any such extensions fees to Deposit Account No. 19-0741.

Respectfully submitted,

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